IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.10600 OF 2004

Sou.Vasanti Alia Mangal Vijay Pawar. ...Petitioner.

Versus

Vijay Tukaram Pawar. ...Respondent.

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Mr. M.S. Karnik for the Petitioner.

Mr. P. B. Shah for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

May 4, 2005.

P.C.:

The Respondent has filed a Petition for divorce against the Petitioner under Section 13 of the Hindu Marriage Act, 1955, on grounds of desertion and cruelty. The Petition was instituted on 15th December 2003. A notice of the petition was served on 24th t January 2004. On 5th July 2004 a "No Written Statement" order was passed and the petition was directed to proceed without the Written Statement. On 31st August 2004, the Petitioner filed an application for extension of time to file the

Written Statement. That application was misconceived for the simple reason that an appropriate application for the Petitioner to move was an application to set aside the no Written Statement order. Such an application was filed on 16th September 2004 which has been dismissed by the impugned order dated 28th October 2004. Having regard to the fact that this is a matrimonial dispute and having particularly regard to the position of the parties, I am of the view that grave and irreparable injustice would be caused to the Petitioner if she is not given an opportunity to defend the proceedings. The Learned Trial Judge has taken a hyper technical view of the matter. In these circumstances, the impugned order dated 28th October 2004 is quashed and set aside. The application filed by the Petitioner, Exhibit "B" to this petition is allowed. The Written Statement of the Petitioner shall be taken on record by the Learned Trial Judge. The petition is accordingly disposed of.

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